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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Congress of the United States
House of Representatives
Washington, DC 20515

September 9, 2003

Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Dear Secretary VanBrakle:

It is my understanding that UPS has filed for an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. There are several factors that they feel warrant an exemption and the company recently called these to my attention.

During consideration of the *Ocean Shipping Reform Act* (OSRA) revisions of 1998, Congress carefully considered all aspects of the ocean shipping industry including the role of NVOCCs. Based on the nature of ocean shipping at the time, Congress determined that NVOCCs should be regulated differently than vessel operators. In the late 1990s, most NVOCCs were small enterprises that neither owned ocean vessels nor the cargo being shipped. In order to protect shippers and to guarantee liability coverage, Congress determined that NVOCCs should operate under a published tariff system when dealing with their customers.

However, the state of the U.S. ocean shipping industry has changed dramatically since passage of OSRA. There has been unprecedented consolidation among ocean carriers resulting in the loss of major U.S. flagged carriers. In an effort to offer customers a full range of services, these very same carriers have created vertically integrated logistics companies that now compete with NVOCCs.

It is my impression that UPS operates a very sophisticated, integrated, intermodal transportation network in the world, which includes air, rail and surface and NVOCC transportation, and is deemed a "carrier" in the surface and air freight industries. Furthermore, UPS has indicated to me that it makes significant annual capital investments to its asset-based transportation infrastructure. These factors, they feel, warrant an exemption from the prohibition on NVOCCs having confidential contracts. It would seem that the UPS petition, citing the recent evolution of the ocean shipping marketplace, is an example of the reason Congress granted such broad exemption authority to the FMC.

I am hopeful the FMC will give the UPS petition fair consideration in accordance with all applicable rules and regulations.

Sincerely,

Patrick J. Kennedy
Member of Congress

CC: 030/030
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